

The Honorable James L. Robart

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

KYLE ROBERT TORNOW,

Defendant.

NO. CR20-145JLR

PLEA AGREEMENT

The United States of America, by and through Tessa M. Gorman, Acting United States Attorney for the Western District of Washington, and Thomas M. Woods, Assistant United States Attorney for said District, Defendant KYLE ROBERT TORNOW and Defendant's attorney Christopher Sanders, enter into the following Agreement, pursuant to Federal Rule of Criminal Procedure Rule 11(c).

1. **Waiver of Indictment.** Defendant, having been advised of the right to be charged by Indictment, agrees to waive that right and enter a plea of guilty to the charge brought by the United States Attorney in an Information.

2. **The Charge.** Defendant, having been advised of the right to have this matter tried before a jury, agrees to waive that right and enters a plea of guilty to the following charge contained in the Information:

1 a. Interstate Threats, in violation of Title 18, United States Code,
2 Section 875(c).

3 By entering this plea of guilty, Defendant hereby waives all objections to the form
4 of the charging document. Defendant further understands that before entering any guilty
5 plea, Defendant will be placed under oath. Any statement given by Defendant under oath
6 may be used by the United States in a prosecution for perjury or false statement.

7 3. **Elements of the Offense.** The elements of the offense to which Defendant
8 is pleading guilty are as follows:

9 First, the Defendant knowingly sent a message in interstate commerce;

10 Second, the message contained a true threat to injure the person of another;

11 That the Defendant intended that the message be taken as a true threat.

12 4. **The Penalties.** Defendant understands that the statutory penalties
13 applicable to the offenses to which Defendant is pleading guilty are as follows: a
14 maximum term of imprisonment of up to 5 years; a fine of up to \$250,000, a period of
15 supervision following release from prison of up to 3 years, and a mandatory special
16 assessment of \$100 dollars. If a probationary sentence is imposed, the probation period
17 can be for up to five years.

18 Defendant understands that supervised release is a period of time following
19 imprisonment during which Defendant will be subject to certain restrictive conditions and
20 requirements. Defendant further understands that, if supervised release is imposed and
21 Defendant violates one or more of the conditions or requirements, Defendant could be
22 returned to prison for all or part of the term of supervised release that was originally
23 imposed. This could result in Defendant serving a total term of imprisonment greater
24 than the statutory maximum stated above.

25 Defendant understands that as a part of any sentence, in addition to any term of
26 imprisonment and/or fine that is imposed, the Court may order Defendant to pay
27 restitution to any victim of the offense, as required by law.
28

1 Defendant further understands that the consequences of pleading guilty may
 2 include the forfeiture of certain property, either as a part of the sentence imposed by the
 3 Court, or as a result of civil judicial or administrative process.

4 Defendant agrees that any monetary penalty the Court imposes, including the
 5 special assessment, fine, costs, or restitution, is due and payable immediately and further
 6 agrees to submit a completed Financial Statement of Debtor form as requested by the
 7 United States Attorney's Office.

8 **5. Rights Waived by Pleading Guilty.** Defendant understands that by
 9 pleading guilty, Defendant knowingly and voluntarily waives the following rights:

- 10 a. The right to plead not guilty and to persist in a plea of not guilty;
- 11 b. The right to a speedy and public trial before a jury of Defendant's
 12 peers;
- 13 c. The right to the effective assistance of counsel at trial, including, if
 14 Defendant could not afford an attorney, the right to have the Court
 15 appoint one for Defendant;
- 16 d. The right to be presumed innocent until guilt has been established
 17 beyond a reasonable doubt at trial;
- 18 e. The right to confront and cross-examine witnesses against Defendant
 19 at trial;
- 20 f. The right to compel or subpoena witnesses to appear on Defendant's
 21 behalf at trial;
- 22 g. The right to testify or to remain silent at trial, at which trial such
 23 silence could not be used against Defendant; and
- 24 h. The right to appeal a finding of guilt or any pretrial rulings.

25 **6. United States Sentencing Guidelines.** Defendant understands and
 26 acknowledges that the Court must consider the sentencing range calculated under the
 27 United States Sentencing Guidelines and possible departures under the Sentencing
 28 Guidelines together with the other factors set forth in Title 18, United States Code,

Section 3553(a), including: (1) the nature and circumstances of the offenses; (2) the history and characteristics of Defendant; (3) the need for the sentence to reflect the seriousness of the offenses, to promote respect for the law, and to provide just punishment for the offenses; (4) the need for the sentence to afford adequate deterrence to criminal conduct; (5) the need for the sentence to protect the public from further crimes of Defendant; (6) the need to provide Defendant with educational and vocational training, medical care, or other correctional treatment in the most effective manner; (7) the kinds of sentences available; (8) the need to provide restitution to victims; and (9) the need to avoid unwarranted sentence disparity among defendants involved in similar conduct who have similar records. Accordingly, Defendant understands and acknowledges that:

a. The Court will determine Defendant's Sentencing Guidelines range at the time of sentencing;

b. After consideration of the Sentencing Guidelines and the factors in 18 U.S.C. 3553(a), the Court may impose any sentence authorized by law, up to the maximum term authorized by law;

c. The Court is not bound by any recommendation regarding the sentence to be imposed, or by any calculation or estimation of the Sentencing Guidelines range offered by the parties or the United States Probation Department, or by any stipulations or agreements between the parties in this Plea Agreement; and

d. Defendant may not withdraw a guilty plea solely because of the sentence imposed by the Court.

7. **Ultimate Sentence.** Defendant acknowledges that no one has promised or guaranteed what sentence the Court will impose.

8. **Statement of Facts.** The parties agree on the following facts. Defendant admits Defendant is guilty of the charged offense:

a. On July 24, 2020, KYLE TORNOW, while in Seattle, Washington, and using the internet, transmitted a bomb threat using the TrackIT system, which is

1 maintained and operated in Portland, Oregon. Specifically, TORNOW made the
2 following threat:

3 Subject: War with citizens

4 Message:

5 I am going to bomb a police precinct in Portland, OR. The bomb is already
6 in place and has been packaged in a way that prevents detection from
7 canine officers. Unless your officers disengage your war with the citizens
8 of Portland I will blow up this precinct. You are weak. We are strong, many
9 and fluid in nature. If I am caught, others will take my place and
10 immediately detonate the bomb. This is a felony threat. Please take this
11 seriously to avoid death.

12 b. As TORNOW knew, this threat was in fact false—no bomb had
13 been placed at any Portland precincts. TORNOW made the threat hoping that the
14 Portland police would have to evacuate multiple precincts.

15 c. The parties agree that the Court may consider additional facts
16 contained in the Presentence Report (subject to standard objections by the parties) and/or
17 that may be presented by the United States or Defendant at the time of sentencing, and
18 that the factual statement contained herein is not intended to limit the facts that the parties
19 may present to the Court at the time of sentencing.

20 9. **Sentencing Factors.** The parties agree that the following Sentencing
21 Guidelines provisions apply to this case as to Count 1:

22 a. A base offense level of 12, pursuant to Section 2A6.1;

23 b. A four-level reduction pursuant to Section 2A6.1(b)(6) because the
24 offense involved a single instance evidencing little or no deliberation, and none of the
25 other enhancements under Section 2A6.1(b) apply;

26 c. A six-level enhancement pursuant to Section 3A1.2 because the
27 victims were government employees and the offense was motivated by such status;
28

1 d. A two-level reduction for acceptance of responsibility pursuant to
2 Section 3E1.1(a) because the defendant has clearly demonstrated acceptance of
3 responsibility for the offense.

4 The parties agree they are free to present arguments regarding the applicability of
5 all other provisions of the United States Sentencing Guidelines. Defendant understands,
6 however, that at the time of sentencing, the Court is free to reject these stipulated
7 adjustments, and is further free to apply additional downward or upward adjustments in
8 determining Defendant's Sentencing Guidelines range.

9 **10. Sentencing Recommendation.** At the time of sentencing, the government
10 will recommend a sentence no higher than within the applicable Guidelines range, as
11 calculated by the Court. Defendant is free to recommend any sentence. Defendant
12 understands that the parties' recommendations are not binding on the Court and the Court
13 may reject the recommendations of the parties and may impose any term of imprisonment
14 up to the statutory maximum penalty authorized by law. Defendant further understands
15 that Defendant cannot withdraw a guilty plea simply because of the sentence imposed by
16 the Court. Except as otherwise provided in this Plea Agreement, the parties are free to
17 present arguments regarding any other aspect of sentencing.

18 **11. Non-Prosecution of Additional Offenses.** As part of this Plea Agreement,
19 the United States Attorney's Office for the Western District of Washington agrees not to
20 prosecute Defendant for any additional offenses known to it as of the time of this Plea
21 Agreement based upon evidence in its possession at this time, and that arise out of the
22 conduct giving rise to this investigation. In this regard, Defendant recognizes the United
23 States has agreed not to prosecute all of the criminal charges the evidence establishes
24 were committed by Defendant solely because of the promises made by Defendant in this
25 Plea Agreement. Defendant agrees, however, that for purposes of preparing the
26 Presentence Report, the United States Attorney's Office will provide the United States
27 Probation Office with evidence of all conduct committed by Defendant.
28

1 Defendant agrees that any charges to be dismissed before or at the time of
 2 sentencing were substantially justified in light of the evidence available to the United
 3 States, were not vexatious, frivolous or taken in bad faith, and do not provide Defendant
 4 with a basis for any future claims under the "Hyde Amendment," Pub. L. No. 105-119
 5 (1997).

6 **12. Breach, Waiver, and Post-Plea Conduct.** Defendant agrees that, if
 7 Defendant breaches this Plea Agreement, the United States may withdraw from this Plea
 8 Agreement and Defendant may be prosecuted for all offenses for which the United States
 9 has evidence. Defendant agrees not to oppose any steps taken by the United States to
 10 nullify this Plea Agreement, including the filing of a motion to withdraw from the Plea
 11 Agreement. Defendant also agrees that, if Defendant is in breach of this Plea Agreement,
 12 Defendant has waived any objection to the re-institution of any charges that previously
 13 were dismissed or any additional charges that had not been prosecuted.

14 Defendant further understands that if, after the date of this Agreement, Defendant
 15 should engage in illegal conduct, or conduct that violates any conditions of release or the
 16 conditions of confinement (examples of which include, but are not limited to, obstruction
 17 of justice, failure to appear for a court proceeding, criminal conduct while pending
 18 sentencing, and false statements to law enforcement agents, the Pretrial Services Officer,
 19 Probation Officer, or Court), the United States is free under this Plea Agreement to file
 20 additional charges against Defendant or to seek a sentence that takes such conduct into
 21 consideration by requesting the Court to apply additional adjustments or enhancements in
 22 its Sentencing Guidelines calculations in order to increase the applicable advisory
 23 Guidelines range, and/or by seeking an upward departure or variance from the calculated
 24 advisory Guidelines range. Under these circumstances, the United States is free to seek
 25 such adjustments, enhancements, departures, and/or variances even if otherwise
 26 precluded by the terms of the Plea Agreement.

27 **13. Waiver of Appellate Rights and Rights to Collateral Attacks.**
 28 Defendant acknowledges that, by entering the guilty plea required by this plea agreement,

Defendant waives all rights to appeal from Defendant's conviction and any pretrial rulings of the Court, and any rulings of the Court made prior to the entry of the judgment of conviction. Defendant further agrees that, provided the Court imposes a custodial sentence that is within or below the Sentencing Guidelines range (or the statutory mandatory minimum, if greater than the Guidelines range) as determined by the Court at the time of sentencing, Defendant waives to the full extent of the law:

a. Any right conferred by Title 18, United States Code, Section 3742, to challenge, on direct appeal, the sentence imposed by the Court, including any fine, restitution order, probation or supervised release conditions, or forfeiture order (if applicable); and

b. Any right to bring a collateral attack against the conviction and sentence, including any restitution order imposed, except as it may relate to the effectiveness of legal representation.

This waiver does not preclude Defendant from bringing an appropriate motion pursuant to 28 U.S.C. § 2241, to address the conditions of Defendant's confinement or the decisions of the Bureau of Prisons regarding the execution of Defendant's sentence.

If Defendant breaches this Plea Agreement at any time by appealing or collaterally attacking (except as to effectiveness of legal representation) the conviction or sentence in any way, the United States may prosecute Defendant for any counts, including those with mandatory minimum sentences, that were dismissed or not charged pursuant to this Plea Agreement.

14. Voluntariness of Plea. Defendant agrees that Defendant has entered into this Plea Agreement freely and voluntarily, and that no threats or promises were made to induce Defendant to enter a plea of guilty other than the promises contained in this Plea Agreement or set forth on the record at the change of plea hearing in this matter.

15. Statute of Limitations. In the event this Plea Agreement is not accepted by the Court for any reason, or Defendant breaches any of the terms of this Plea Agreement, the statute of limitations shall be deemed to have been tolled from the date of

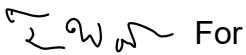
the Plea Agreement to: (1) thirty (30) days following the date of non-acceptance of the Plea Agreement by the Court; or (2) thirty (30) days following the date on which a breach of the Plea Agreement by Defendant is discovered by the United States Attorney's Office.

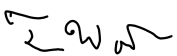
16. **Completeness of Agreement.** The United States and Defendant acknowledge that these terms constitute the entire Plea Agreement between the parties, except as may be set forth on the record at the change of plea hearing in this matter. This agreement binds only the United States Attorney's Office for the Western District of Washington. It does not bind any other United States Attorney's Office or any other office or agency of the United States, or any state or local prosecutor.

Dated this ~~22nd~~ day ~~April~~, 2021.
4th May

s/ Christopher M. Sanders, signed on behalf of Defendant
KYLE TORNOW
Defendant

s/ Christopher M. Sanders
CHRISTOPHER SANDERS
Attorney for Kyle Tornow

 For
TODD GREENBERG
Assistant United States Attorney


THOMAS M. WOODS
Assistant United States Attorney